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"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT & TOURISM

CHAPTER ____

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Historical Note: The mandate requiring blending of ten per cent ethanol in motor fuel in the State was originally introduced in 1994 through Act 199. The ethanol mandate language in Act 199 became part of chapter 486E, Hawaii Revised Statutes. Chapter 486E was replaced in 1997 by Chapter 486J, Hawaii Revised Statutes. Substantive changes relative to the ethanol blending mandate have been made to incorporate provisions of Act

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77, SLH 2002, which amended chapter 486J, Hawaii Revised Statutes, by: 1) requiring the "petroleum commissioner" to refer intentional violations to the attorney general, who may exercise appropriate legal or equitable remedies available to the State; and 2) changing references to the department and the director of business, economic development, and tourism in the Petroleum Reporting Act to the "petroleum commissioner", who is to be the head of the department's energy, resources, and technology division.

§ 15-__-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the requirement that gasoline sold in the State for use in motor vehicles contain ten per cent ethanol by volume under the Petroleum Industry Reporting Act authorized by chapter 486J-10, Hawaii Revised Statutes.
[Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§ 15-__-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"CIF Honolulu terminal" denotes the quoted sales price of motor fuel, which includes the cost, insurance and freight charges to any terminal in Honolulu, Hawaii.

"Competitively priced" means fuel-grade ethanol CIF Honolulu terminal for which the wholesale price, minus the value of all applicable federal, state, and county tax credits and exemptions, is not more than the average (over the past twelve months) posted wholesale rack price of unleaded gasoline of comparable grade published in the State or as published by the U.S. Department of Energy, Energy Information Administration in Petroleum Marketing Monthly.

"Distributor" means and includes:

(1) Every person who refines, manufactures, produces, or compounds fuel in the State, and sells it at wholesale or at retail, or who utilizes it directly in the manufacture of products or for the generation of power;

(2) Every person who imports or causes to be imported into the State or exports or causes to be exported from the State, any fuel; and

(3) Every person who acquires fuel through exchanges with another distributor.

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"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"Petroleum commissioner" or "commissioner" means the administrator of the energy, resources, and technology division of the department of business, economic development, and tourism.

[Eff.] (Auth: HRS §§ 486J-1 and 486J-10) (Imp: HRS §§ 486J-1 and 486J-10)

SUBCHAPTER 2 IMPLEMENTATION OF HRS § 486J-10

§ 15-__-3 Schedule of ethanol content requirement. To meet the chapter 486J-10(a) requirement that motor vehicle gasoline sold in the State for use in motor vehicles shall contain ten per cent ethanol by volume, the petroleum commissioner in accordance with chapter 91, Hawaii Revised Statutes establishes the following year-by-year step increase schedule based on the percentage of gasoline sold in the State for use in motor vehicles:

(a) Starting January 1, 2004, at least thirty-five per cent of all gasoline sold in the State for use in motor vehicles must contain ten per cent ethanol by volume;

(b) Starting January 1, 2005, at least seventy per cent of all gasoline sold in the State for use in motor vehicles must contain ten per cent ethanol by volume;

(c) Starting January 1, 2006, at least eighty-five per cent of all gasoline sold in the State for use in motor vehicles must contain ten per cent ethanol by volume.

[Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§ 15-__-4 Minimum ethanol content requirement. Distributor shall meet the minimum ethanol content requirement of this chapter on an individual quarterly and annual basis.

§ 15-__-5 Monitor and display of ethanol content by distributor. It shall be the responsibility of the distributor to constantly monitor and display ethanol content at rack meter loading facilities. Distributors shall permit the petroleum commissioner or authorized agent(s) of the department of business and economic development and tourism to inspect the rack meter loading facilities of the distributor during regular

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business hours to ensure the mandated volume of ethanol is included in gasoline sold by the distributor. [Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§ 15-__-6 Ethanol based additives. (a) Gasoline sold in the State for use in motor vehicles blended with an ethanol-based product, such as ethyl tertiary butyl ether, shall be considered to be in conformance with this chapter if the quantity of ethanol used in the manufacture of the ethanol-based product represents ten per cent, by volume, of the finished motor fuel.

(b) Ethanol used in the manufacture of ethanol-based gasoline sold in the State for use in motor vehicles, such as ethyl tertiary butyl ether, may be considered to contribute to the distributor's conformance with this chapter provided that the total quantity of ethanol used by the distributor is an amount equal to or greater than the minimum amount of ethanol required to be blended by the distributor. [Eff.] (Auth: HRS § 486J-10(b) & (c)) (Imp: HRS § 486J-10(b) & (c))

§ 15-__-7 Monthly reporting requirements of distributors. (a) Each distributor shall file with the petroleum commissioner monthly on forms prescribed, prepared and furnished by the petroleum commissioner, a statement certified by the chief executive officer or other authorized officer of the distributor showing:

(1) The amount of ethanol or ten per cent ethanol blended gasoline purchased by the distributor in the preceding month and year-to-date;

(2) The price paid for ethanol or ten per cent ethanol blended gasoline purchased in the preceding month and year-to-date on a gross basis and net of federal and state tax exemptions and credits;

(3) The amount of ethanol-blended gasoline sold by the distributor in the preceding month and year-to-date;

(4) The amount of non-ethanol-blended gasoline sold by the distributor in the preceding month and year-to-date;

(5) The current volume of ethanol it is holding in inventory;

(6) The complete name and address of supplier or suppliers of ethanol or ten per cent ethanol blended gasoline from whom the distributor made the purchase in the preceding month; and

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(7) Any other information the petroleum commissioner determines from time to time as being required to ensure compliance with chapter 486J-10, Hawaii Revised Statutes.

(b) The monthly report shall be filed on or before the last day of the calendar month following the month of the report.

(c) In the case of a failure to file a monthly report required under this section on the date and in the manner prescribed therefor, or a failure to include any of the information required to be shown on the monthly report filed under this section or to show the correct information, there shall be paid by the distributor \$_____ for each day during which the failure continues. The maximum penalty under this subparagraph on failures with respect to any one monthly report shall not exceed \$_____.

(d) Payment of late filing fees imposed pursuant to this section must be made by cashier's or personal check made payable to the "State of Hawaii" and delivered to the petroleum commissioner. The name of the distributor for whose payment is made should be written on the check.

[Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§ 15-__-8 Quarterly reporting requirements of distributors. (a) Upon satisfying the reporting requirements of § 15-__-7 on a timely basis for twelve consecutive months, the distributor, upon notification by the petroleum commissioner, may elect to file quarterly instead of monthly, on forms prescribed, prepared and furnished by the petroleum commissioner, a statement certified by the chief executive officer or other authorized officer of the distributor showing:

(1) The amount of ethanol or ten per cent ethanol blended gasoline purchased by the distributor in the three preceding months and year-to-date;

(2) The price paid for ethanol or ten per cent ethanol blended gasoline purchased in the three preceding months and year-to-date on a gross basis and net of federal and state tax exemptions and credits;

(3) The amount of ethanol-blended gasoline sold by the distributor in the three preceding months and year-to-date;

(4) The amount of non-ethanol-blended gasoline sold by the distributor in the three preceding months and year-to-date;

(5) The current volume of ethanol it is holding in inventory;

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(6) The complete name and address of supplier or suppliers of ethanol or ten per cent ethanol blended gasoline purchased from whom the distributor made the purchase in the three preceding months; and

(7) Any other information the petroleum commissioner determines from time to time as being required to ensure compliance with chapter 486J-10, Hawaii Revised Statutes.

(b) Quarterly reports for the quarter ending March 31, June 30, September 30 and December 31 shall be filed with the petroleum commissioner on or before the last day of the calendar month following the last month of the quarterly report.

(c) In the case of a failure to file a quarterly report required under this section on the date and in the manner prescribed therefor, or a failure to include any of the information required to be shown on the quarterly report filed under this section or to show the correct information, there shall be paid by the distributor \$_____ for each day during which the failure continues. The maximum penalty under this subparagraph on failures with respect to any one quarterly report shall not exceed \$_____.

(d) Payment of late filing fees imposed pursuant to this section must be made by cashier's or personal check made payable to the "State of Hawaii" and delivered to the petroleum commissioner. The name of the distributor for whose payment is made should be written on the check.

[Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§ 15-__-9 Monthly report of ethanol suppliers. Each ethanol supplier in the State supplying ethanol to distributors in this chapter shall file monthly with the petroleum commissioner a statement, certified by the chief executive officer or other authorized officer of the ethanol supplier, showing the current volume of competitively priced ethanol available for purchase by distributors.

[Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

SUBCHAPTER 3 EXEMPTIONS

§ 15-__-10 Request for an exemption. The petroleum commissioner may authorize the sale of gasoline that does not meet the requirement of ten per cent ethanol if the petroleum commissioner determines that:

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(1) Sufficient quantities of competitively priced ethanol are not available, CIF Honolulu terminal, to meet the minimum requirements of this chapter; or

(2) In the event of any other circumstance for which the petroleum commissioner determines compliance with this chapter would cause unreasonable financial hardship.

[Eff.] (Auth: HRS § 486J-10(d)) (Imp: HRS § 486J-10(d))

§ 15-__-11 Process for granting an exemption. (a) To obtain an exemption from the ethanol content requirement of this chapter, the distributor seeking an exemption shall: (1) Submit a written claim of insufficient quantity of competitively priced ethanol or (2) Submit a written claim that compliance with the ethanol blending mandate will cause unreasonable financial hardship.

(b) When seeking an exemption by a written claim of unavailability of sufficient quantities of competitively priced ethanol, the claimant distributor shall establish and provide supporting documentation:

(1) That the average posted wholesale rack price of unleaded gasoline of comparable grade published in the State is less than the fuel-grade ethanol CIF Honolulu terminal (wholesale price minus the value of all applicable federal, state, and county tax credits and exemptions); or

(2) That sufficient quantities of competitively priced ethanol are not available to meet the minimum ethanol requirements of this chapter.

(c) When seeking an exemption by a written claim of unreasonable financial hardship, the claimant distributor shall:

(1) Establish that the distributor is in full compliance with the reporting requirements of section 15-__-7 or, if authorized to file quarterly reports, section 15-__-8; and

(2) Demonstrate that the direct costs associated with compliance with the ethanol content requirement of this chapter exceed the applicable federal, state and county tax incentives so that to recover the direct costs it would be necessary to increase the retail price of ethanol blended motor fuel inclusive of taxes above the average retail price over the previous twelve months of motor fuel of comparable grade published in the State or as published by the U.S. Department of Energy, Energy Information Administration in Petroleum Marketing Monthly.

Examples: (A) The ethanol blended motor fuel is exempt from \$0.053 per gallon of Federal Motor Fuel taxes at the

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wholesale level and \$0.045 per gallon of State of Hawaii General Excise taxes at the retail level. The direct costs to Distributor #1 to produce the base motor fuel, store, purchase and blend ethanol results in an increased cost per gallon of blended motor fuel of \$0.03 per gallon. Distributor #1 increases the wholesale motor fuel price for the ethanol blended motor fuel by \$0.03 per gallon to recover its direct costs. Distributor #2 purchases the ethanol blended motor fuel at an increased price of \$0.03 per gallon for retail sale. Distributor #2 may recover its increased cost of \$0.03 per gallon through its reduction in the State General Excise tax of \$0.045 per gallon. In determining whether compliance with the ethanol mandate has placed unreasonable financial hardship on either distributor the collective impact of the tax exemptions is taken into consideration. The net impact of compliance with the ethanol content requirement of this chapter would be a reduction in the net cost of the ethanol blended motor fuel of \$0.068 per gallon after taking into consideration the Federal, State and County tax credits and exemptions. Distributor #1 recovered its direct costs in the increased wholesale price. Distributor #2 recovered its increased cost in its GET exemption. There would be no undue hardship.

(B) The ethanol blended motor fuel is exempt from \$0.053 per gallon of Federal Motor Fuel taxes at the wholesale level and \$0.045 per gallon of State of Hawaii General Excise taxes at the retail level. The direct costs to Distributor #1 to produce base gasoline, store, purchase and blend ethanol results in an increased cost per gallon of blended motor fuel of \$0.03 per gallon. Distributor #1 increases the wholesale motor fuel price for the ethanol blended motor fuel by \$0.07 per gallon. Distributor #2 purchases the ethanol blended motor fuel at an increased price of \$0.07 per gallon for retail sale. Distributor #2 is unable to increase the price at the retail level. The net impact on Distributor #2 is a net increase in costs of \$0.035 per gallon of ethanol blended fuel. In determining whether compliance with the ethanol content requirement of this chapter has

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placed unreasonable financial hardship on either Distributor #1 or Distributor #2 the collective impact of tax exemptions is taken into consideration. The net impact of compliance with the ethanol content requirement of this chapter would be a reduction in the net cost of the ethanol blended motor fuel of \$0.028 per gallon after taking into consideration the Federal, State and County tax credits or exemptions or both. There would be no unreasonable financial hardship on either Distributor #1 or Distributor #2 since the increased net cost and apparent hardship to Distributor #2 was not due to compliance with the ethanol content requirement of this chapter but due to an increase in the wholesale price of the ethanol blended motor fuel beyond the amount required by Distributor #1 to recover its increased direct costs.

(C) The ethanol blended motor fuel is exempt from \$0.053 per gallon of Federal Motor Fuel taxes at the wholesale level and \$0.045 per gallon of State of Hawaii General Excise taxes at the retail level. The direct costs to Distributor #1 to produce base gasoline, store, purchase and blend ethanol results in an increased cost per gallon of blended motor fuel of \$0.15 per gallon. Distributor #1 increases the wholesale motor fuel price for the ethanol blended motor fuel by \$0.15 per gallon. Distributor #2 purchases the ethanol blended motor fuel at an increased price of \$0.15 per gallon for retail sale. Distributor #2 must increase the retail price exclusive of taxes by \$0.105 per gallon to recover its increased costs. The net impact will either be an increase in the retail price or an increase in Distributor #2's net costs of \$0.045 per gallon of ethanol blended fuel. In determining whether compliance with the ethanol content requirement of this chapter has placed unreasonable financial hardship on either Distributor #1 or Distributor #2 the collective impact of tax exemptions is taken into consideration. The net impact of compliance with the ethanol content requirement of this chapter would be an increase in the net cost of the ethanol blended motor fuel of \$0.052 per gallon after taking into

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consideration the Federal, State and County tax credits or exemptions or both. There would be unreasonable financial hardship on Distributor #2 if Distributor #2 is unable to increase the retail price sufficient to recover the increased net cost of \$0.105 per gallon. The unreasonable financial hardship would be the result of compliance with the ethanol content requirement of this chapter.

(3) In the event that sufficient quantities of competitively priced ethanol are unavailable in a given month to meet the ethanol content requirement of this chapter, the petroleum commissioner shall exempt only the difference in percentage of the ethanol content requirement of this chapter and the gasoline sold in the State in which competitively priced ethanol is available.

Example: The ethanol content requirement beginning January 1, 2005 is fifty-eight per cent. Competitively priced ethanol is sufficient to blend only fifty-five per cent of all gasoline sold in the State in January 2005. The petroleum commissioner shall exempt distributors the difference of three per cent, thereby requiring only fifty-five per cent of all gasoline sold in January 2005 to contain ethanol.

(d) For purposes of subsection (c), direct costs shall be calculated by generally accepted accounting principles and in conformity with Section 263 of the U.S. Internal Revenue Code.

(e) The written claim as set forth in subsection (a) shall be certified by the chief executive officer or other authorized officer of the claimant distributor and delivered to the Energy, Resources and Technology Division of the Department of Business and Economic Development & Tourism, 235 S. Beretania Street, Room 505, Honolulu, Hawaii 96804, along with supporting documentation.

(f) Exemptions are granted for one model month only, and may be renewed monthly, if supporting documentation is provided.

(g) The petroleum commissioner shall provide to the claimant distributor within fifteen days after receipt of a request that complies with this section, a written determination as to whether the claimant distributor's request has been granted or denied. The petroleum commissioner shall grant exemptions only if the claimant distributor can demonstrate that the claimant distributor is experiencing unreasonable financial

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hardship or that sufficient quantities of competitively priced ethanol are not available.

(h) In addition to the evaluation of supporting documentation of claimant distributor in this chapter, the petroleum commissioner shall evaluate monthly reports of ethanol suppliers as set forth in section 15-__-9.

[Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§ 15-__-12 Criteria for evaluating exemptions. A request for an exemption may be summarily denied if:

(1) The claimant distributor has failed to provide supporting documentation establishing either that quantities of competitively priced ethanol are unavailable or that compliance with the minimum ethanol requirement will cause unreasonable financial hardship; or

(2) It is apparent that the request has failed to state, and to present facts and legal argument in support thereof, that quantities of competitively priced ethanol are unavailable or that compliance with the minimum ethanol requirement will cause unreasonable financial hardship.

[Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

SUBCHAPTER 4 VIOLATIONS, SEVERABILITY AND ENFORCEMENT

§ 15-__-13 Violations. Any person who engages in a practice which does not comply with the requirements of this chapter or exemption issued pursuant thereto shall be in violation of this chapter and shall be subject to enforcement action by the petroleum commissioner. [Eff.] (Auth: HRS § 486J-10(g)) (Imp: HRS § 486J-10(g))

§ 15-__-14 Severability. If any provision of this chapter is held invalid, the invalidity shall not affect the remainder of this chapter and, to this end, the provisions of this chapter are severable. [Eff.] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§ 15-__-15 Referral to attorney general. The petroleum commissioner shall refer any violations of any provision of this chapter to the attorney general, who may exercise appropriate legal or equitable remedies available to the State." [Eff.

] (Auth: HRS § 486J-9(b)) (Imp: HRS § 486J-9(b))